

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GEORGETOWN PROPERTY OWNERS)	
ASSOCIATION, KIMBERLY T.)	
COSKON, CECIL R. FRIEND,)	
GEORGETOWN ASSOCIATES, LP)	
GEORGETOWN ASSOCIATES II LP.)	
JAMES BOYER, BEDFORD)	
ASSOCIATES, CAROL GOOS,)	
ERNEST MCGEE, JR., CHARLES B.)	
PEPPER, JOHN BRIGGS, HAROLD)	
SHORT, BAMDAD BAHAR, AREZOO)	
BAHAR, BAHAR LLC, GREENLEE)	
CO., MCCANN ENTERPRISES, INC.,)	
DREW ABBOTT, DUNBARTON)	
APARTMENTS, DONALD MCCANN,)	
JAMES WALLS, FRED RUST,)	
EDWARD ROGERS, VINCENT)	
FINOCCHIO, SHABBIR CHOCHAN,)	
MJM MANAGEMENT CORP., JOHN)	
NMN WILLIAMS, D& N RENTAL HOMES,)	
LLC, MARIA RAMOS, WALTER PEREZ,)	
HERMELINDO TOMAS-PEREZ, ENRIQUE)	
GABOA, et al.,)	
)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 01-881-SLR
)	
TOWN OF GEORGETOWN, ROBERT RICKER,)	
GARY TONGE, LEE TUREK, JOHN B.)	
ROACH, JR., MICHAEL WYATT, DAVID)	
BAIRD, and DEBBIE PFEIL,)	
)	
Defendants.)	

MEMORANDUM ORDER

At Wilmington, this 27th day of September, 2002, having reviewed defendants' motion to dismiss and the papers submitted in connection therewith;

IT IS ORDERED that said motion (D.I. 25) is granted in

part and denied in part, for the reasons that follow:

1. Plaintiffs at bar include Hispanic tenants and their landlords who have alleged that the Town of Georgetown, Delaware, through the acts of individual defendant officials and in its own right, set a rental licensing fee of \$150.00 per unit with the purpose of discouraging Hispanic or Latino persons from residing in Georgetown. Plaintiffs also allege that defendants have developed a pattern and practice of discriminatory housing code enforcement, by targeting Hispanic units while ignoring and not inspecting units occupied by non-Hispanics. Finally, plaintiffs allege that the rental license applications required by defendants unfairly target Hispanic residents. The court has jurisdiction to review this motion pursuant to 28 U.S.C. § 1331.

2. In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set

of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

3. The court concludes that the allegations directed at defendants' imposition of the increased rental license fees must be dismissed pursuant to 28 U.S.C. § 1341, which statute bars suits in federal court for an injunction, declaratory or damages action challenging the validity of a state's taxation system. See, e.g., California v. Grace Brethren Church, 457 U.S. 393, 408 (1982); Fair Assessment in Real Estate Assoc., Inc. v. McNary, 454 U.S. 100, 113-114 (1981). This court has interpreted § 1341 to include within its scope local real estate tax assessments. See Raskaukas v. Town of Bethany Beach, 555 F.Supp. 783, 788 (D.Del. 1983). The court finds in this case that the rental license fees likewise fall within the scope of § 1341. The court further finds plaintiffs have adequate redress in the state court system for the contested fees imposed.¹ The fact

¹Although plaintiffs argue that the available state remedies do not provide the full panoply of rights and remedies afforded under the Fair Housing Act, 42 U.S.C. §§ 3601 et seq., that is not the standard. The standard is "whether the state remedy provides the taxpayer with a full hearing and judicial determination at which the taxpayer may raise any and all constitutional objections to the tax." Lawyer v. Hilton Head Public Service District No. 1, 220 F.2d 298, 301-302 (4th Cir. 2000). The court finds that plaintiffs have the right to assert a constitutional challenge to the fees at issue by way of a declaratory judgment action pursuant to 10 Del. C. §§ 6501, et

that plaintiffs have sued under a federal statute does not trump the principle of comity that bars federal courts from granting relief in the context of local taxes.

4. The court further concludes, however, that plaintiffs' allegations relating to discriminatory housing code enforcement and the discriminatory rental license applications withstand the 12(b)(6) challenge. The Fair Housing Act prohibits conduct which: (1) denies or makes housing unavailable to any person based on race, color or national origin; or (2) discriminates against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, religion, sex, familial status, or national origin. 42 U.S.C. § 3604(a) and (b). Although defendants argue that the rental applications and code enforcement are directed to all Georgetown residents, not just Hispanic or Latino residents, plaintiffs have alleged that defendants' conduct is different in kind as directed to plaintiffs for improper purposes. Under these circumstances, and taking plaintiffs' allegations as true,

seq., in either the State's Court of Chancery or Superior Court. See Hardwick v. Cuomo, 891 F.2d 1097, 1104-1106 (3d Cir. 1989) ("[T]he critical criterion as to the adequacy of the remedy available to the taxpayers is not the relief which they can obtain in [state court] proceedings, but whether [the state] provides a forum for presentation of their claim. Thus, . . . the right which they must be afforded under [state] law is the **procedural** right to make their claims and not the **substantive** right to recover . . .").

the court finds dismissal inappropriate at this time.² See
generally, Resident Advisory Bd. v. Rizzo, 564 F.2d 126 (3d Cir.
1977).

Sue L. Robinson
United States District Judge

²Likewise, the court finds that plaintiffs' allegations are sufficiently detailed to withstand defendants' challenge to the claims raised under 42 U.S.C. §§ 1981-1983 and the Fourteenth Amendment. Although the court recognizes that defendants may not be liable for damages in their official capacities due to their legislative immunity, they are still subject to suit for injunctive relief.